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'Malicious Prosecution': Lawyers for Dr. Meryl Nass Allege Maine Medical Board Violated Nass' First Amendment Rights

Children's Health Defense is funding a lawsuit filed by Dr. Meryl Nass, a Maine physician and outspoken critic of official COVID-19 policies, who alleges the Maine Board of Licensure in Medicine engaged in "retaliatory conduct" when it suspended her medical license. Attorneys for Nass last week argued that the court should not grant the board's motion to dismiss.

By Michael Nevradakis, Ph.D.

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Lawyers for Dr. Meryl Nass, a biological warfare expert and outspoken critic of official COVID-19 policies, responded to attempts to dismiss a federal lawsuit Nass filed against the Maine Board of Licensure in Medicine (BOLIM) for what she alleged was "retaliatory conduct."

Nass, an internal medicine physician and member of the Children's Health Defense (CHD) scientific advisory committee, sued the board in August 2023, alleging violations of her First Amendment rights and her rights under the Maine Constitution by using their power to "crush dissenting views and chill disfavored speech."

The BOLIM suspended Nass' license on Jan. 12, 2022, for spreading COVID-19 "misinformation," for improperly prescribing hydroxychloroquine and ivermectin and for improper record-keeping.

The "misinformation" charges were dropped in October 2022, but in September 2023, the board found Nass guilty of medical incompetence and placed her on a two-year probation.

In December 2023, the BOLIM voted unanimously to extend the suspension of Nass' medical license to 39 months. It also levied a $10,000 fine and required Nass to engage in professional oversight and undergo a neuropsychological evaluation to get her medical license back.

CHD is providing financial and legal resources to Nass' Maine-based legal team.

Last week's hearing before Judge Jon Levy of the U.S. District Court for the District of Maine pertained to the Maine attorney general's motion to dismiss Nass' federal complaint, according to Gene R. Libby, one of the attorneys representing Nass.

The attorney general sought dismissal of the lawsuit arguing the BOLIM and its members have sovereign immunity as agents of the state of Maine, and that Nass' claims are covered by a parallel claim she filed in state court in December 2023, alleging the board violated her First Amendment and due process rights.

Nass said there are key differences between the two cases, telling The Defender that the federal lawsuit concerns what she says is the BOLIM's "malicious prosecution" of her "that showed bias" and "went outside their jurisdiction," while the claim pending in Kennebec County Superior Court in Maine appeals her conviction by the board.

Libby explained that the state case constitutes "a review of governmental action" while the federal lawsuit claims "retaliatory harassment" against Nass "for the board's investigative — not adjudicatory — actions," for which Nass is seeking damages.

"The attorney general argued the investigative functions of the board were inextricably intertwined with the board's adjudicatory responsibility," Libby said. "We argued the complaint alleged facts that established a plausible claim and that further factual development [discovery] is needed."

"Discovery would allow us to depose board members and board staff to explore and hopefully discover additional facts that establish bad faith and that this was, in fact, a pretext to punish Dr. Nass for her protected speech," Libby added.

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Kim Mack Rosenberg, senior counsel for CHD, described Nass' lawsuit as an effort "to protect her right to free speech [and] to share valuable information, not only with her patients but with the public."

"Here, the BOLIM's treatment of Dr. Nass, including its censorship, does a disservice to Dr. Nass and the medical profession generally. We now wait for the court's decision determining next steps in this ongoing matter," Rosenberg said.

'The defendants had no way to justify what they did to me'

Nass told The Defender last week's hearing "went well," adding, "The defendants had no way to justify what they did to me."

Libby agreed. "The court was well prepared" for the arguments posed and "is required to resolve all doubts in favor of Dr. Nass and accept all allegations in the complaint as true on a motion to dismiss," he said.

"If Dr. Nass made a 'plausible claim' based on a fair reading of the complaint, then the motion to dismiss would be denied," Libby said.

According to Libby, "The primary legal issues" at play "are whether the federal court should abstain under the Younger doctrine that limits federal courts' involvement in ongoing state court matters — here the state court's 80C review."

Libby said:

> "The court also considered whether the board and individual board members had absolute or qualified immunity from suit. Finally, the court considered whether Younger didn't apply under the bad faith exception. The exception applies to intentional or reckless state conduct that interferes with clearly established constitutional rights — the right here to speak openly and publicly in opposition to the government's vaccination mantra and the use of alternative outpatient treatments of hydroxychloroquine and ivermectin.
>
> "The focus here is on the board's investigation, not its adjudicatory conduct that is most likely protected by some form of immunity."

Tyler J. Smith, an attorney representing Nass, told the court the federal lawsuit is "not a claim for damages" but, instead, a response to the BOLIM's effort to "retaliate against disfavored speech," in violation of the First Amendment.

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'Ongoing constitutional violation'

Referring to the BOLIM's actions against Nass, Smith said, "The whole message to the Maine medical community is, 'If you're a doctor, please say things that are good about the COVID-19 vaccine. But if you have things that are bad to say about the COVID-19 vaccine, you are going to be in front of the board facing disciplinary action.'"

Smith referenced a position statement the BOLIM issued in the fall of 2021, stating that licensees could face disciplinary action if they "generate and spread COVID-19 vaccine misinformation or disinformation."

The Maine board's fall 2021 position statement expressed its support for a statement by the Federation of State Medical Boards (FSMB) — a private organization with no regulatory authority — which threatened physicians "who generate and spread COVID-19 vaccine misinformation" with suspension or revocation of their medical license.

According to the statement, physicians have a high degree of public trust and therefore a responsibility to "share information that is factual, scientifically grounded and consensus-driven for the betterment of public health."

The Maine board's statement endorsed the FSMB statement, encouraged physicians to address misinformation when encountered, directed physicians to use circulated materials from the American Medical Association (AMA), and said that questioning the COVID-19 vaccine qualifies as "misinformation," according to the complaint.

In October 2021, soon after the statement was issued, the board received a complaint alleging Nass was spreading misinformation online and soon after launched an investigation.

Michael Miller, one of the lawyers representing the BOLIM, argued that the state's statement did not attempt to limit Nass' speech.

"There's nowhere in that statement ... that says you have to take a position — a particular position on the vaccine or not on the vaccine," Miller said. "It simply says you are going to be required to be truthful in your communications to your patients, just like you would be if you were telling them about their cancer diagnosis or something else. That's all it is."

But according to Smith, the BOLIM's position statement said:

> "Physicians who generate and spread COVID-19 vaccine misinformation or disinformation are risking disciplinary action by state medical boards, including the suspension or revocation of their medical license.
>
> "The board also applies the standard to all misinformation regarding COVID-19, including non-verbal treatments and preventative measures. Then the statement goes on and has hyperlinks to different resources which are presented as resources to be used to fight misinformation."

"The whole point here is speech," Smith said. "The point here is that if you're a physician and you speak about COVID-19, you need to speak with the government's preferred view or you will be in front of the Maine Board of Licensure facing potential suspension and revocation of your license."

"We do have the position statement in place which basically puts Dr. Nass and all physicians in Maine under a cloud of potential discipline from the board should they speak in a way that the board disfavors — and that would be an ongoing constitutional violation," Smith added.

Smith said that contrary to arguments made by the BOLIM, the First Amendment and Supreme Court precedent protect professional speech.

He said:

> "We have decades of precedent explaining that public officials violate the First Amendment when they commit official reprisal for a person's public speech. There's no reasonable argument that any First Amendment exceptions apply, particularly including professional speech.
>
> "It is also well settled that Dr. Nass's speech in this case was protected speech. It was speech about highly charged issues in politics, in medicine but it was becoming a political issue, and some of it even involved statements made to a Maine state agency [that is] legislating."

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Nass faced 'harassment' for exercising First Amendment rights

Miller defended the BOLIM's actions by accusing Nass of misinformation and repeating a claim made by the board regarding questions about Nass' mental health.

He said:

> "The board was concerned about the care that Dr. Nass was providing to her patients, first and foremost. And then ... some of the information or the misinformation or the objectively false information that she had made to the public, which, with prospective patients, included things that gave rise to a question of whether or not there might be some kind of a mental health condition that Dr. Nass had that might be impacting her ability to practice medicine."

Smith described this as a form of harassment in addition to being a violation of Nass' First Amendment rights, telling the court:

> "And really the harm ... is not the actual requirement of going through a neuropsychological examination or having to produce documents in response to the subpoena. It's harassment for exercising one's First Amendment rights.
>
> "They get basically blacklisted because they get this order of neuropsychological examination, which really implies to the world that the board has some reason to think that Dr. Nass is mentally ill ... I do not see how there is any basis in the statute for allowing that because there was no allegation of mental illness, alcohol abuse, drug abuse, anything like that."

Smith also brought up the drawn-out nature of the BOLIM's hearings against Nass.

Rather than conducting the hearings about the allegations over consecutive days, the BOLIM held single-day hearings about every other month — with Nass' ability to practice medicine suspended the entire time.

"The board proceeding in this case took ... what I at least would presume is an unprecedented amount of time," Smith said.

Nass' legal team also disputed the state's claims of immunity, which Miller repeated during the hearing, stating, "Sovereign immunity bars all the claims against the board because the board is an arm of the state."

Smith countered, "The function that they are performing that Dr. Nass is challenging is an investigative function. Now, from our position that removes any absolute immunity."

"They have immunity for the performance of their job as outlined in statute," Nass told The Defender. "If they are performing retaliatory acts unrelated to medical care of patients, we do not think they are immune. Why would the government give them immunity for other types of behavior?"

Broader implications for medical speech

According to Nass, she and her legal team will now "wait for the judge to rule," in a process that could take months.

Libby said the next steps will be determined by the court's order. He explained:

> "If the complaint is dismissed or if the motion to dismiss is denied, an appeal to the U.S. Court of Appeals for the First Circuit is likely, since the case involves some novel legal issues challenging the board's investigation and its alleged bad faith in punishing Dr. Nass because of her public advocacy against government vaccination policy."

Rosenberg said that the outcome of this case will have broader implications for medical speech across the U.S. and worldwide, and on government efforts to suppress disfavored narratives.

She said:

> "Dr. Nass' pending legal actions, in both federal and state court, against the Maine Board of Licensure In Medicine, are of importance not only to her personally, not only to doctors in

Maine, but important to doctors around the U.S. and around the world.

"The COVID-19 pandemic brought to the fore attempts by many — such as state medical boards — to intrude upon doctors' ability to speak freely to their patients and to speak freely to the public concerning important medical issues, including treatments.

"These attacks on doctors are not based on patient outcomes or whether the doctors' speech is accurate or scientifically supported, but merely by whether they counter the narrative that governmental agencies and others promoted."

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Michael Nevradakis, Ph.D.

Michael Nevradakis, Ph.D., based in Athens, Greece, is a senior reporter for The Defender and part of the rotation of hosts for CHD.TV's "Good Morning CHD."

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Patpat
12 days ago
The audacity is stunning: "We didn't tell Dr. Nass what to say. She is simply required to say our version of the truth."
17 0 Reply • Share ›

deanbob → Patpat
11 days ago
Very true; and I thought that message AND attitude was exuded by the board meeting after meeting: "How dare Dr Nass not do what we've told her and other doctors to say., even if her patients were happy with her care.".
8 0 Reply • Share ›

GarySummers → Patpat
10 days ago
"Dr. Nass is a 'Great American' and it is 'Obscene' what they are trying to do to her!"
1 0 Reply • Share ›

Pilgrim
12 days ago
Thank you to CHD for financially supporting Dr. Nass through this incredible ordeal.
I'm praying the judge does the reasonable thing and seeing the Maine Board of Licensure In Medicine, overreach for exactly what it is.
15 0 Reply • Share ›

Len Hughes
11 days ago
What these truth teller doctors have had to endure is appalling. Never thought I'd see what is happening today. Big Pharma RULES the medical industry, no dissent is allowed.

I believe in Canada every doctor who didn't take the covid shots has their license suspended. Why? What happened to democratic Rights and Freedoms? What has happened to Dr. Nass is criminal! Drs. Nass, Kory, Marik, McCullough, Thorne and all the other truth teller doctors are a bright light in the dark, they are life savers. Give it enough time, they will be vindicated!
8 0 Reply • Share ›

Julie
12 days ago
Thanks for fighting the good fight Dr. Nass. You have my support!
8 0 Reply • Share ›

jwm79
12 days ago
How scummy must you be to be a lawyer representing these crooks, liars and murderers like the Maine medical board?
8 0 Reply • Share ›

Mayfield → jwm79
9 days ago
I agree, pretty scummy. Also, an absence of morality, detachment from God, and full-blown avarice. The Ten Commandments are a good touchstone and these Medical Boards forgot to incorporate them into their lives. They've chosen to kill innocents for money and then lie about it.

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alexei68
12 days ago

"... you are going to be required to be truthful in your communications to your patients"

But the crucial question is who is the arbiter of what is "truthful" and how do they prove it?

6 0 Reply • Share ›

r2bzjudge
11 days ago edited

"Smith referenced a position statement the BOLIM issued in the fall of 2021, stating that licensees could face disciplinary action if they "generate and spread COVID-19 vaccine misinformation or disinformation.""

The CDC/FDA/NIH are the ones who have been generating and spreading Covid-19 vaccine misinformation or disinformation. They had control of the 450,000 pages of Pfizer documentation and withheld it from the public. The CDC withheld the V-Safe data. The CDC withheld safety trigger data.

BOLIM and other state license boards don't want doctors telling patients the truth about the unsafe Covid shots or anti-viral drugs such as Ivermectin, which do have good efficacy against Covid.

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LawrenceNative
11 days ago

This is heartbreaking. As an RN, spent 40+ years ensuring my patients were able to give informed consent for procedures & treatments, but when asked, not one of the recipients of the jab were aware that it was an EUA. Was forced out of my field for not submitting to these genetic treatments, though I had survived the disease, with antibodies vis lab testing. Thank you for supporting Dr Nass.

2 0 Reply • Share ›

MGreen
12 days ago edited

Tyler J. Smith, an attorney representing Nass, told the court the federal lawsuit is "not a claim for damages" but, instead, a response to the BOLIM's effort to "retaliate against disfavored speech," in violation of the First Amendment. >> Am I missing something here? If it is not a claim for damages arising from the abusive retaliation against disfavored speech, then what in heavens name is the point of making the case at all? Damages are the only thing that matter; a court ruling reiterating patent constitutional rights would be no deterrent whatsoever to future abuses.

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Christina
11 days ago

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John Stone Mod → Christina
11 days ago

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